

FINANCIAL INSTITUTIONS COMMITTEE MEETING
Business Law Section, State Bar of California

Meeting of May 9, 2006

Committee Members Present: John Hancock, Chair; Meg Troughton, Vice Chair; Rosie Oda, Secretary; Michael Abraham; Bruce Belton; Leland Chan; Laura Dorman; Andrew Druch; Bart Dzivi; Rob Hale; Linda Iannone; Randy Kennon; Ken Krown; Todd Okun; Russ Schrader; Bob Stumpf; and Keith Ungles.

Advisory Members and Others Present: Sally Brown; Clay Coon; Jim Dyer; Mary Kenney; Ted Kitada; Bob Mulford; Teryl Murabayashi; Michael Occhiolini; Steven Takizawa; Gerry Tsai; Maureen Young.

Committee Members Absent: Mark Gillett; Jay Gould; Rosemary Lemmis; Allan Ono; Brad Seiling; and Richard Zahm.

Call to Order: Our Chair John Hancock of World Savings called the meeting to order at 9:30 A.M.

Welcome to Members and Advisory Members: John welcomed the Committee Members and the Advisory Members and asked each person to identify themselves and where they worked.

1. Approval of April 11, 2006 Minutes: The Committee approved the minutes of the April 11, 2006 meeting without objection.

2. Federal Data Security Bills: Rob Hale of World, who recently penned an article for the Bar's Business Law News on the subject, provided a chart entitled "Federal Privacy Bills – Status Update", that contains bills currently pending in Congress dealing with privacy and identity theft. The bill currently receiving the most attention is H.R. 3997, which was introduced last year by Rep. LaTourette. This bill requires policies and procedures to protect security and confidentiality of personal financial information, and tracks the "reasonably likely" standard which has already been used in state legislation. H.R. 4731, which applies to owners of websites, requires that they destroy obsolete data containing personal information. Bob Stumpf of Sheppard Mullin mentioned that he has just settled a seven year old case in this area, as Rob pointed out that the plaintiffs bar is trying to find out when data breaches have occurred and to get lists of customers. So far, the OCC has protected this information. Michael Abraham of Bartko Zankel also mentioned a case he is currently litigating on the issue of whether card associations are subject to the California statute.

3. New Deposit Insurance Rules: John asked if anyone wanted to comment on the merger of the Bank Insurance and Savings Association Insurance Funds under the Federal Deposit Insurance Reform Act of 2005. The FDIC issued implementing rules on April 21, 2006. Ted Kitada of Wells mentioned that the insurance limit for IRAs has

been raised to \$250,000, and Leland Chan of the CBA said that further raises will be tied to the cost of living beginning in 2010.

4. Class Action Fairness Act and OCC Guidance: Isabelle Ord of Sheppard Mullin was unable to attend today and will cover this subject at the next meeting.

5. SB 1481: John asked Ted to advise the Bar Association's Larry Doyle on this proposed amendment of the UCC, which, among other things, changes the definition of good faith. Leland mentioned that the CBA agreed to remove the choice of law provisions. If anyone has any comments on this legislation, which was emailed to members yesterday, John asked them to provide their comments to Ted.

6. State Legislative Report: Bob Mulford reviewed his handout, beginning by noting that yesterday was the deadline for all state legislation to get out of committee. As a result, legislative proposals on jury waiver and arbitration have been eliminated. Among the good news, SB 1311 a business-oriented initiative has substituted a requirement that businesses make sure that consumers who sign settlement agreements understand English for a requirement that the State Bar produce a study of this issue. SB 1699 prohibits printing more than the last 5 digits of a credit card account or the expiration date on any transaction document to be retained, which other Committee members complained will be a hardship on banks.

7. Federal Legislative Report: Bart Dzivi noted that he concurred with Rob's speculation that it would be unlikely that any of the privacy bills will be passed. He pointed out that the log jam on the Regulatory Relief legislation has been broken on the Senate side, and a bill will now go the Senate floor. It contains some nuggets. For example, Section 709 expands the FOIA exemption for information received from a foreign regulator. Interestingly, the banking agencies were expressly provided with the authority to challenge the issuance of the SEC's Proposed Reg B in court.

8. Texas Statute: Sally Brown of BofA alerted us to the existence of a Texas statute requiring that banks file conflict of interest questionnaires for local officials or politicians as to their interest income on deposits, etc. It is difficult to meet these Texas certification requirements when some local governments in Texas are refusing to disclose names of officials. Even more troubling, the legislation is retroactive. Unfortunately, other states are considering similar legislation, such as Florida. Sally agreed to send John information on the Texas law for distribution to our Committee members.

9. New Office of Foreign Assets Control ("OFAC") Guidance: Maureen Young of Bingham reviewed the risk-based policies and procedures for deploying the OFAC program that are contained in the BSA Examination Handbook published by the FFIEC. She pointed out that very few institutions would fit into the "low" risk category. Maureen described the risk-based policies and procedures as a way to look at OFAC compliance beyond computer programs. She also pointed out the lack of a level playing field for banks when other financial institutions subject to compliance are not being held accountable.

10. Miscellaneous: John announced that Michael Abraham is our Committee's representative on the ADR Committee. John reiterated his announcement at the last meeting, upon prompting by Maureen, that it is time to recommend candidates for next year's committee. There are eight available slots.

11. Adjournment: The meeting was adjourned at 11:00 a.m.